

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Case No.: 23-13359 (VFP)

Chapter 11

(Jointly Administered)

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING PINNACLE HILLS, LLC TO
FILE UNDER SEAL (I) PINNACLE HILLS, LLC'S SUR-REPLY IN FURTHER
SUPPORT OF ITS OBJECTION TO DEBTORS' MOTION FOR ORDER
AUTHORIZING DEBTORS TO ASSUME AND ASSIGN LEASE FOR
STORE NO. 1142; AND (II) THE DECLARATION OF JEFFREY ARONOFF
IN SUPPORT OF PINNACLE HILLS, LLC'S SUR-REPLY IN FURTHER
SUPPORT OF ITS OBJECTION TO DEBTORS' MOTION FOR ORDER
AUTHORIZING DEBTORS TO ASSUME AND ASSIGN LEASE FOR STORE NO. 1142**

Pinnacle Hills, LLC ("Landlord"), landlord to debtor Bed Bath & Beyond Inc.,

hereby files this motion (the "Seal Motion") for entry of an order, substantially in the form

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

submitted concurrently herewith (the “Proposed Order”), authorizing Landlord to file under seal and redact certain portions of (i) *Pinnacle Hills, LLC’s Sur-Reply in Further Support of its Objection to Debtors’ Motion for Order Authorizing Debtors to Assume and Assign Lease for Store No. 1142* (the “Sur-Reply”); and (ii) the *Declaration of Jeffrey Aronoff in Support of Pinnacle Hills, LLC’s Sur-Reply in Further Support of its Objection to Debtors’ Motion for Order Authorizing Debtors to Assume and Assign Lease for Store No. 1142* (the “Declaration”).

In support of this Seal Motion, Landlord respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to consider the Seal Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested are section 107 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”).

BACKGROUND

3. On April 23, 2023, each of the above-captioned debtors (collectively, the “Debtors”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned bankruptcy cases (the “Chapter 11 Cases”).

4. No trustee has been appointed in the Chapter 11 Cases and Debtors are operating their businesses as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

5. Pursuant to a written lease agreement (as amended or supplemented, the “Lease”), Landlord leases to Debtors certain retail premises at the shopping center commonly referred to as the Pinnacle Hills Power Center, located in Rogers, Arkansas.

6. On May 3, 2023, Debtors filed their *Motion for Entry of an Order (I) Establishing Procedures to Sell Certain Leases, (II) Approving the Sale of Certain Leases, and (III) Granting Related Relief*,² which the Court granted on May 22, 2023.³ On June 30, 2023, Debtors filed the *Notice of Assumption of Certain Unexpired Leases*, pursuant to which Debtors sought to assume and assign the Lease to Michaels Stores, Inc. (“Assignee”).⁴

7. On July 12, 2023, Landlord filed the *Objection of Pinnacle Hills, LLC to Debtors' Motion for Order Authorizing Debtors to Assume and Assign Lease for Store No. 1142* (the “Objection”).⁵

8. In further support of the Objection, Landlord filed the Sur-Reply and the Declaration immediately prior to filing this Seal Motion.

RELIEF REQUESTED

9. By this Seal Motion, Landlord seeks entry of the Proposed Order (i) authorizing Landlord to file unredacted copies of the Sur-Reply and the Declaration under seal; (ii) ordering that the unredacted versions of the Sur-Reply and the Declaration remain confidential and not be made available to anyone other than the Court; and (iii) authorizing Landlord to redact confidential portions of the Sur-Reply and the Declaration that disclose sensitive commercial information and to file such redacted versions on the docket in the Chapter 11 Cases.

² Docket No. 193.

³ Docket No. 422.

⁴ Docket No. 1157.

⁵ Docket No. 1323.

BASIS FOR RELIEF

10. Section 107(b) of the Bankruptcy Code provides, in pertinent part:

On the request of a party in interest, the bankruptcy court shall...
(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information....⁶

11. Bankruptcy Rule 9018, in turn, explains the process by which a party-in-interest may seek relief under Bankruptcy Code section 107(b):

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information....⁷

12. Once it is established that information sought to be protected can be categorized as confidential commercial information, the Bankruptcy Code does not require a party seeking protection to demonstrate cause. In fact, if information qualifies as commercial information under Bankruptcy Code section 107(b), then “the court is *required* to protect a requesting interested party and has no discretion to deny the application.”⁸

13. Landlord submits that certain discrete information in the Sur-Reply and the Declaration falls within the scope of information that the Court may protect pursuant to Bankruptcy Code section 107(b)(1) and Bankruptcy Rule 9018. Courts in this Circuit have noted that section 107(b) is “meant to shield entities from disclosure of commercial information that, if disclosed, would result in “an unfair advantage to competitors” and “cause the entity commercial injury.”⁹

⁶ 11. U.S.C. § 107(b).

⁷ Fed. R. Bankr. P. 9018; *see also* D.N.J. LBR 9018-1.

⁸ *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original); *accord In re Farmland Indus., Inc.*, 290 B.R. 364, 368 (Bankr. W.D. Mo. 2003).

⁹ *In re Altegrity, Inc.*, 2015 WL 10963572, at *3 (Bankr. D. Del. July 6, 2015) (internal citations and quotations omitted).

14. The Sur-Reply and the Declaration contain certain commercial information, including financial and business terms. Disclosure of such information would be detrimental to the respective business interests of Landlord and its tenants. Requiring Landlord to disclose such information could have a chilling effect by discouraging prospective tenants from leasing retail space offered by Landlord.

15. Accordingly, Landlord requests entry of the Proposed Order authorizing it to redact discrete information included in the Sur-Reply and the Declaration that will be available on the public docket in the Chapter 11 Cases.

NOTICE

16. Notice of this Seal Motion has been provided to: (a) the office of the United States Trustee for the District of New Jersey; (b) counsel to Debtors; (c) counsel to the Official Committee of Unsecured Creditors; (d) counsel to the Prepetition ABL Agent; (e) counsel to the DIP Agent; and (f) all parties requesting notices pursuant to Bankruptcy Rule 2002. In light of the relief requested herein, Landlord submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, Landlord respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: August 18, 2023

Respectfully submitted,

/s/ Robert L. LeHane

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